IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 18483 of 1998

Between:

The Depot Manager, A.P.S.R.T.C.,
Eleswaram Depot, East Godavari District.

..... PETITIONER

AND

1 Industrial Tribunal-cum-Labour Court,
Visakhapatnam.
2 K.Muthyala Rao, Eleswaram Depot,
The Regional Secretary ,TMS Union, A.P.S.R.T.C.,
Rajahmundry.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction particularly one in the nature of Writ of Certiorari calling for the records relating to I.D.No.320/95 on the file of the 1st respondent and quash the award dt.6.1.98 in the said I.D. published in G.O.Rt.No.379 dt.12.2.1998.

Counsel for the Petitioner: Mrs. B. G. Uma Devi, Standing Counsel for APSRTC

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for Respondent No.2. : Mr. A. Srinivasa Sarma

The Court made the following :

ORAL ORDER:

This writ petition is filed by the Depot Manager, Andhra Pradesh State Road Transport Corporation, Eleswaram Depot, East Godavari District, being aggrieved by the award passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, in I.D.No.320 of 1995 dated 6.1.1998.

The respondent No.2 herein, who is a workman, was engaged in the A.P.S.R.T.C. as a conductor on daily wage basis during “Godavari Pushkarams” i.e. from 7.8.1991 to 27.8.1991. He was again re-engaged on daily wage basis w.e.f. 5.5.1992 at Ramachandrapuram and worked in that capacity w.e.f. 20.7.1992 till 30.11.1992. During the above said four months period, he absented for services for 60 days without any permission or sanction of leave. Lastly, he absented for duties from 20.11.1992 onwards without any leave. On 30.11.1992, his services were disengaged. Thereafter, he raised a dispute through a recognized union, and the same was referred to the Industrial Tribunal-cum-Labour Court, Visakhapatnam, by the Government of A.P., for adjudication of the following issue.

"Whether the action of Depot Manager, APSRTC, Yeleswaram, East Godavari District, in awarding punishment of disengagement of the services of Sri K. Muthyalarao, E.490111, Casual Conductor of Eleswaram vide orders No.P1/145(28)/92-YLM dated 30.11.92 is justified?"

The case of the workman before the Industrial Tribunal-cum-Labour Court was that he was appointed after being subjected to a regular selection process. The absenteeism attributed against him is in the nature of misconduct, enumerated in the regulations of the Corporation and unless a detailed enquiry was conducted, the petitioner-Management herein could not have dispensed with the services of the workman. Therefore, the disengagement order passed on 30.11.1992 is arbitrary and illegal.

A rejoinder was filed by the petitioner-Management before the Labour Court stating that the disengagement order passed on 30.11.1992 was just and proper and the same is in consonance with the terms and conditions of his engagement in the Corporation.

Before the Labour Court, in support of his claim, the workman himself was examined as WW-1 and on behalf of the Management, MW-1 was examined. On behalf of the workman, the documents Ex.W-1 was marked and on behalf of the Management, the documents Exs.M-1 to M-7 were marked. After a detailed consideration of the entire evidence available on record, the Industrial Tribunal-cum-Labour Court, Visakhaptnam, held that if really it is the absenteeism that weighed with the management, it could have taken proper steps to prove the absenteeism against the workman and dismissed him through proper procedure. The management, that too a public sector undertaking, has no right to resort to colourable exercise of its power to terminate. In fact, such an exercise of power is unfair labour practice and thus, the so called disengagement of the workman is

unjustified and untenable. The Tribunal accordingly directed the management to reinstate the workman with continuity of service and back wages. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner-Management strenuously contends that assuming that there was some lapse on the part of the Management in not conducting enquiry as required under the Regulations of the Corporation, but nonetheless, the misconduct alleged against the workman is a matter on record and there is no explanation from the workman, and further, the disengagement was in consonance with the terms and conditions of his appointment. Further, it is contended that the Labour Court granted reinstatement with full back wages and continuity of service, to the workman, who has hardly been engaged for 5 to 6 months in the Corporation and, thus, the award of the Tribunal is arbitrary, illegal and liable to be set aside.

Per contra, learned counsel for the workman contends that whether the misconduct and absenteeism is a matter on record or not, the workman has explained his absence and also produced sick certificate. Without examining them and without following the procedure as required under the APSRTC (CCA) Regulations, the services of the workman were terminated and was dispensed with by stating that 'the services of the workman were disengaged as per the terms and conditions of his appointment', which is nothing but arbitrary. Therefore, the Labour Court had rightly came to the conclusion that the public sector undertaking should not have adopted such practice and the same amounts to unfair labour practice. It is, therefore, submitted that the award of the Labour Court does not suffer from any infirmities calling for interference by this court under Art.226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side.

At the outset, I am of the view that the order of disengagement passed by the petitioner-Management on 30.11.1992 is, ex facie, illegal. The Management, once having attributed misconduct of absenteeism, it is not open for them to just dispense with the services of the workman saying that his services are disengaged as per the terms of appointment. Once the misconduct is attributed, the Management is bound to conduct a detailed enquiry into the misconduct by giving opportunity to the workman and thereafter the disciplinary authority could have passed orders on merits. This is not one such case. Therefore, the Labour Court has rightly held that the disengagement of the workman from service is arbitrary and illegal and is entitled for reinstatement with back wages and continuity of service.

However, I am of the opinion that the Labour Court, while granting relief of reinstatement, exceeded its powers under Section 11-A of the Industrial Disputes Act, 1947 (for short 'the Act'), by granting continuity of service and back wages. May be, in a case like this, since there was no delay on the part of the workman in raising an industrial dispute, even the continuity of service can be granted. In a case of misconduct of absenteeism, it is matter on record and the workman also did not deny as to his absence from duties without any permission. The defence of the workman is that he has produced sick certificate and without examining and without conducting enquiry, his services were disengaged. Once the misconduct of absenteeism is a matter on record, the Labour Court ought to have taken the same into consideration while awarding back wages in favour of the workman. In the circumstances, I am of the considered opinion that the workman is not entitled for any back wages as awarded by the Labour Court. Admittedly, even according to the workman, he was engaged during 'Godavari Pushkarams' from 7.8.1991 to 27.8.1991, and he was re-engaged with effect from 20.7.1992 till the date of disengagement on 30.11.1992. During this short span of time, the workman absented himself for 60 days. Therefore, I am of the opinion that the Labour Court had grossly erred in exercising its powers vested under Section 11-A of the Act, by

granting full back wages. In cases of this nature, the workman is not entitled for any back wages. Therefore, the award of the Labour Court is modified to the following effect.

"The petitioner-Management is directed to reinstate the workman with continuity of service, but without any back wages and attendant benefits."

With the above modifications, the writ petition is partly allowed. No order as to costs.

23.6.2005

CVM

To,

1 Industrial Tribunal-cum-Labour Court,
Visakhapatnam.
2. 2 CCs to G.P. for Labour, High Court buildings, Hyderabad (OUT).

3. 2 CD copies.